

Child Victims and Witnesses

By James C. Backstrom, Dakota County Attorney and
Nicole E. Nee, Assistant Dakota County Attorney

In the last 20 years or so, jurisdictions all over the United States have taken great strides in the identification, prosecution and prevention of the physical and sexual abuse of children. The abuse of children by their parents and caretakers had been in large part an untold secret in this Country, primarily because citizens either refused to believe the abuse occurred, or if they did believe it occurred, were unconcerned because children had few rights, and were historically considered no better than property, to be used as a parent saw fit. The telling of the secret of abuse has given hope for children who otherwise would have been lost and left to suffer.

Despite the advances made, child abuse remains a tragic problem in the United States. The United States Advisory Board on Child Abuse and Neglect reported in 1995 that the leading cause of death in the United States of children under age four is homicide, mostly caused by parents and caretakers. Estimates provide that between five and 11 out of every 100,000 children under age four are killed by abuse. Abuse or neglect permanently disables over 18,000 children annually and in 1994, 141,700 children in this Country suffered serious injury as a result of child abuse.¹ (Report from United States Advisory Board on Child Abuse and Neglect, 1995, "A Nation's Shame: Fatal Child Abuse and Neglect in the United States".) Further, approximately 150,000 confirmed cases of sexual abuse were reported to child welfare authorities in 1993.²

Beginning around 1975, governmental agencies and health care communities began to realize that their efforts must be coordinated to effectively reach and assist endangered children. Many children were being missed by otherwise well-meaning professionals who lacked the basic skills and knowledge to identify the signs of abuse, or were being missed by an otherwise well-meaning system that was not set up to share information between its agencies, thereby overlooking a pattern of abuse that may otherwise have been identified. Since the late 1970's, prosecutor's offices, law enforcement, child protective services (social service agencies), health care and treatment agencies, victim advocates, guardians ad litem, courts, and other interested agencies across the Country made a growing and purposeful effort to educate their staffs, share information and work more closely together to better serve and protect children.

I. Mandatory Reporting Laws

During the 1980's, individual States began to pass mandatory reporting requirements in cases involving suspected child abuse. These laws require various professionals who come into contact with children in their work, such as pediatricians and other medical and treatment providers, school principals and teachers and day care operators to report to child protection or law enforcement officials suspected abuse of a child. Continued training regarding mandated reporting needs to be given to insure compliance, but with the passage and enforcement of these laws, reports of abuse increased dramatically. Many pre-school children, of course, never come into contact with a mandated reporter, and this is the age group at greatest risk of severe physical abuse.

II. Child Abuse Teams

Along with mandated reporting, an important step in improving the ability to identify and prosecute child abusers was the creation of "child abuse teams." Some states have mandated through legislation that child abuse be investigated in a "team" consisting of both a criminal investigator and a child protection worker. Minnesota is one of these states. The criminal investigator and child protection worker compliment each other in their various strengths -- the law enforcement representative having expertise in criminal investigation, and the child protection worker having expertise in child development, family dynamics and in providing protection for surviving children. Some states, including Minnesota, have also created "review teams" at a jurisdictional or district level, where prosecutors, medical doctors, law enforcement, child protection, and representatives from other agencies meet weekly (or other specified intervals) to review specific cases. The purpose of the review at this level is to enhance communication through agencies, to facilitate the sharing of information, and to keep all of these agencies working together to improve the system's response to the needs of children.

The prosecutor's office should be available from the time that the report of abuse is first initiated to the closing of the case to ensure that proper coordination occurs during the investigation and assessment process. The prosecutor's office should also be a resource to the victim's family in explaining both the criminal and child protection processes. The victim's family should be notified of all developments in the case and consulted for their input regarding important decisions such as plea negotiations or case disposition.

III. Interview Techniques

Often a team investigation includes a "joint interview" of the child. Typically, the criminal investigator and the child protection worker decide in advance who will ask the questions of the child while the other takes notes and follows up with questions that his/her investigation requires. Some jurisdictions bring child victims to an "interviewing specialist" where the child protection worker, criminal investigator, and perhaps an attorney, watch the interview through a one-way mirror or on closed circuit television. These interviews are also videotaped to preserve the child's testimony for later use at trial. The videotaped interview is of great use to the jury as it preserves the child's testimony from a time where the child's memory of the abuse will be clearer because it is more recent, and the child will be under less stress since the interview is conducted outside of a courtroom in a more informal and relaxed setting. Many jurisdictions use "interview specialists" who are also medical professionals who also conduct a physical examination of the child at the time of the interview. These medical experts can detect evidence of abuse that the child may have failed to report, and can testify about physical evidence of abuse at later court hearings.

A special educational focus for all professionals who work in the area of child abuse is learning interview techniques to use with children, which are sensitive to the child's developmental abilities, and which enhance the reliability of the information gathered from the child. Research has shown that children cannot be interviewed as if they are miniature adults. Common sense tells us that the responses a child gives to questions that are too long and complex for them to understand, and which contain words they do not know, are as unreliable as answers given to questions posed to them in a foreign language. To enhance communication with a child, the questioner must be trained to be sensitive to a child's developmental abilities. For example, a pre-school age child's understanding of time is very different from that of an adult's. Instead of

asking "when," ask whether an event occurred before or after a special holiday, before or after a favorite television program, or during the day, or at night. Use short questions, simple sentence construction, simple words.

IV. Importance of Coordination

The important aspects of any investigation protocol adopted by a jurisdiction for child abuse cases is the close coordination of the activities of the criminal investigation and the child protection assessment. When information is shared between agencies the protection of the child is enhanced, and the "system" does not further traumatize the child through repeated interviews.

Though the prosecutor's office is a member of the investigative "team", the prosecutor alone needs to retain the final decision making authority as to whether a case will be brought to court. In larger prosecutor's offices where some attorneys are responsible for criminal prosecution and others for child protection matters, the sharing of information between these attorneys is also essential to insure a coordinated effort.

You should develop written protocols for a coordinated approach to child abuse investigation. These protocols should include:

(1) Statement of purpose.

Example:

To insure the safety of children

To hold more offenders accountable through improved prosecution of child abuse cases.

To prevent trauma to the child caused by multiple contacts with community professionals.

To maintain open communication and case coordination among community professionals, law enforcement, and child protection agencies.

To coordinate and track investigative, prosecutorial and treatment efforts.

To provide the family with needed services.

(2) Articulation of joint and respective missions and organizational responsibilities.

(3) Types of cases covered (for example, sexual abuse and serious or potentially serious cases of physical abuse).

(4) Procedures for handling cases, including special investigative techniques.

Example:

Interview of the child victim and any child witnesses on videotape by a specialist trained in child development; no duplication of interviews.

Use of drawings/anatomically correct dolls.

Medical examination of the child victim by a doctor trained in recognizing the signs and symptoms of child abuse; no duplication of medical exams.

Possible psychological examination of the child victim.

Gathering of medical/psychological and school records of the victim.

Interview of perpetrator.

(5) Criteria for removal of the child from the child's home.

- (6) Criteria for arrest of suspects.
- (7) Criteria for law enforcement referral to the child protective agency.
- (8) Criteria for child protective referral to the law enforcement agency.
- (9) Procedures to assist the child protective agency.
- (10) Criteria and procedures for joint investigation, including timing, prime decision-making authority, and concurrent criminal prosecution and child protection court action.
- (11) Provisions for joint training.
- (12) Provision for multidisciplinary team consultation.
- (13) Criteria and procedures for cooperation and coordination among agencies.
- (14) Provision for regularly evaluating the effectiveness of the protocol and modifying it as needed.³

More detailed information can be provided upon request regarding the development of investigation protocols in Minnesota.

V. Court Proceedings

Legislation and practice in many jurisdictions has provided more sensitivity to the special problems of children in court. Under the best of circumstances an adult victim or witness finds the prospect of testifying before a jury, and a courtroom full of unfamiliar people daunting. Add to that the many feelings a child justifiably may have when testifying before a parent or caretaker who has harmed them. Children have many times been unable to take the witness stand and provide any testimony at all, much less accurate testimony. Legislative advances in the area of courtroom protections offered to child witnesses have been made with some success. Many states provide special exceptions to the general rules of evidence, where, for example, statements made by a child under the age of ten describing physical or sexual abuse may be admitted against the defendant without the necessity of the child testifying at trial. Courts also are permitted to exclude the public from the courtroom when a child is testifying, to take the child's testimony on video tape or closed circuit television, and even to take the child's testimony out of the presence of the defendant under certain circumstances. Courts have also shown increased flexibility with the physical set up of the courtroom when a child is testifying, to make adjustments for a child's smaller physical stature, quieter voice, and shorter attention span.

Courts have also admitted the testimony of many experts in the field of child abuse to assist the jury in understanding the dynamics of child abuse, and thereby enhancing the child's credibility. For example, in many jurisdictions a professional with expertise in the area of child abuse would be able to describe for the jury the "child abuse accommodation syndrome," thus making it easier for the jury to understand why a child did not report the abuse immediately that was suffered at the hands of a caretaker.

VI. Conclusion

Many steps have been taken over the last twenty years in the United States to improve the criminal justice system's response to the abuse of children, but the task of making the system better is ongoing. Many abused children are still missed that might have been saved had the system responded better. The loss of one child is too many. The abuse of children is preventable. Human society owes it to our most precious and most vulnerable citizens, our children, to keep them safe for the future.

¹ United States Advisory Board on Child Abuse and Neglect, *A Nation's Shame: Fatal Child abuse and Neglect in the United States* (1995).

² D. Finkelhor, "Victimization of Children", *American Psychologist*, 49 (3) (1993) 173-183.

³ Besharov, Douglas, Rapporteur; *Combating Child Abuse: Guidelines for Cooperation between Law Enforcement and Child Protective Services* (American Enterprise Institute, 1990) 32, table 4.